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Summary record of the 5th meeting
Held at Headquarters, New York, on Wednesday, 6 October 2010, at 3 p.m.

Chairperson: Ms. Picco (Monaco)

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Agenda item 140: Administration of justice at the United Nations (*continued*)

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10-56895 (E)

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The meeting was called to order at 3.05 p.m.

Agenda item 140: Administration of justice at the United Nations (*continued*) (A/65/86, A/65/303, A/65/304 and A/65/373)

1. **Mr. Gonzales** (Monaco) said that his delegation welcomed the improvements made under the new system of administration of justice, in particular the reduction in the time required to adjudicate cases. The new system had not only produced gains in efficiency, but had also won the trust of staff members. Nevertheless, it remained somewhat weak in certain areas. For example, the Office of Staff Legal Assistance was understaffed, the existing staff lacked experience and the Office's resources were insufficient to meet the growing demand for its services. Moreover, some of the concerns raised by the General Assembly in its resolution 64/233 had not been adequately addressed. That was true, in particular, of the issue of remedies available to non-staff personnel. While the report of the Secretary-General (A/65/373) highlighted the difficulties inherent in the various options mentioned in the resolution, the basic issue of recourse mechanisms for such personnel remained unresolved.

2. The report of the Internal Justice Council (A/65/304) drew attention to the matter of ad litem judges. While that option had facilitated the transition from the old system of internal justice to the new one, favourable consideration should be given to making the ad litem positions permanent, as recommended by the Council, in order to ensure both the independence of the judges and the effectiveness of their actions. His delegation would participate in the activities of the Working Group on administration of justice at the United Nations with a view to consolidating the significant progress made under the new system and resolving the difficulties that would inevitably arise.

3. **Mr. Kim** Hyungjun (Republic of Korea), also welcoming the implementation of the new administration of justice system, said that his delegation, too, was aware that additional steps were needed to ensure independence, professionalism and accountability under the new system. To that end, the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal should be adopted, as it would set standards for the judges and staff of the two Tribunals and would also foster greater confidence in the internal justice system. In addition, the efforts to develop a web-based case management system should continue.

4. Effective remedies for non-staff personnel were needed in order to preserve the credibility and transparency of the United Nations. His delegation was of the view that a separate dispute resolution mechanism was required, since granting such personnel access to the Tribunals would create difficulties because their terms and conditions of service differed from those of staff. At the same time, all possible use should be made of informal dispute resolution in order to avoid unnecessary litigation.

5. **Mr. Christian** (Ghana) said that his delegation was gratified to note that the Secretary-General's positive assessment of the new system of administration of justice was shared by the independent Internal Justice Council. He was also pleased to observe the strong emphasis placed in the various reports on the need to safeguard the institutional and individual independence of all role players. Equally important was ensuring that all role players discharged their responsibilities with due diligence and integrity, without which the values of impartiality, professionalism, transparency, independence and accountability would be compromised. Ghana therefore welcomed the code of conduct for the judges of the two new Tribunals. Consideration should be given to drafting similar codes of conduct for other role players.

6. His delegation also welcomed the steps taken to promote the principle of open hearings in all locations of the Dispute Tribunal and thus to establish uniform practices and standards. The principle of equality of arms should be taken seriously as well, in order to promote a sense of fairness and balance between management and staff. His delegation had noted the Secretary-General's proposals for amending the statutes of the Tribunals and would express its views on them in due course. Care should be taken to ensure that any amendments eventually adopted did not compromise the essential independence or discretionary powers of judges or the interests of parties in pending cases.

7. Ghana welcomed the publication of "A guide to resolving disputes" and the development of a website providing access to all judgements of the Tribunals, which would serve as tools for educating staff and management about their rights and obligations and as guides to the Tribunals' interpretation of the relevant

rules, thereby improving the conduct of management and staff, fostering best practices and minimizing administrative disputes. The quality of the justice rendered by the new system would turn not only on the expertise and experience of the judges and other professionals who staffed it, but also on the availability of adequate resources to sustain it. In addition, rigorous standards must be introduced to discourage frivolous cases. Ghana looked forward to working with other Member States in the Working Group in order to forge consensus on outstanding issues, such as the scope of the new system, and to put in place a system that would stand the test of time.

8. **Mr. Stuerchler** (Switzerland) said that his delegation applauded the significant progress made towards an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice and was particularly pleased that the new system enjoyed the confidence of staff. Every person who worked for the United Nations, including both staff and non-staff personnel, should have access to an independent dispute resolution body. Although none of the recourse options analysed in the Secretary-General's report (A/63/373) seemed suitable for addressing the grievances of non-staff personnel adequately and cost-efficiently, the mechanisms available in the new internal justice system could be an appropriate choice in many cases. As the main objective of the reform had been to create a better system of internal justice, his delegation was encouraged by the fact that the new Tribunals had modified previous jurisprudence of the United Nations Administrative Tribunal in some areas and was confident that the consistency of their jurisprudence would increase as the new system matured. Obviously, that jurisprudence must be in line with the legal foundations of the Organization as set out in the Charter and relevant resolutions.

9. **Mr. Hameed** (Pakistan), applauding the progress made in updating and decentralizing the administration of justice system, said that the launch of a website to provide information about the internal justice system was a welcome development. His delegation looked forward to the launch of a web-based case management system, as well. The coherence and efficiency of the system in the long run and its ability to clear the backlog of pending cases and handle the growing volume of new ones must be ensured. To that end, the legal offices in Nairobi, Beirut, Vienna and other places must have adequate resources to enable them to carry out the tasks assigned to them.

10. **Mr. Sayeed** (India) said that, consistent with the Organization's emphasis on human rights and the rule of law, the system of administration of justice at the United Nations must be independent, transparent, impartial and efficient. He was confident that the new system satisfied those requirements. His delegation was pleased to note that the new system was meeting the expectations of both staff and management and that it had greatly reduced the time required for the resolution of cases, as justice delayed was justice denied. The welcome increase in the use of the system was a reflection of the staff's confidence that their grievances would be addressed professionally, fairly and in a timely manner. The code of conduct for the judges of the Tribunals, with its core principles of independence, impartiality, integrity, propriety, transparency, fairness in the conduct of judicial proceedings, and competence and diligence, would further strengthen users' confidence in the impartiality of the system, bolster the judges' ability to deal with internal grievances and disciplinary cases in a professional manner and ensure judicial accountability, an important facet of judiciary independence.

11. The Secretary-General's report indicated that there had been a marked improvement in informal resolution of grievances under the new system. Efforts in that direction should be strengthened further. His delegation would welcome a report from the United Nations Ombudsman on the matter.

12. Unquestionably, all members of the United Nations workforce should have access to justice. His delegation was flexible on the question of how best to provide such access, however, and was willing to consider all the various possible recourse mechanisms for non-staff personnel put forward in the reports of the Secretary-General and the Internal Justice Council. The Office of Staff Legal Assistance should be strengthened with a view to ensuring that no one was left without recourse.

13. His delegation looked forward to participating in the work of the Working Group in order to address crucial outstanding issues, including the scope of the new system, the question of whether staff associations might file applications before the United Nations Dispute Tribunal, complaints against judges, delegation

of authority for disciplinary measures and the independence of the Management Evaluation Unit.

14. **Mr. Simonoff** (United States of America) said that the adoption of General Assembly resolution 63/253 had been a landmark achievement for the administration of justice at the United Nations and a milestone in the reform of the Organization. His delegation was impressed by the professionalism and productivity of the new system. The two new Tribunals were already having a significant positive impact on the transparency, fairness, efficiency and accountability of the United Nations personnel system.

15. The Secretary-General's report raised a number of important issues concerning the work of the two Tribunals and other aspects of the new system, including the relevance of the jurisprudence of the United Nations Administrative Tribunal, the scope of the Secretary-General's discretion, the production of confidential United Nations documents, the scope of the jurisdiction and competence of the Dispute Tribunal and the harmonization of proceedings before it, among others. All of those issues merited careful consideration, as did the matter of recourse mechanisms for non-staff personnel. His delegation shared the Secretary-General's view that adding the cases of non-staff individuals to the jurisdiction of the Dispute Tribunal would be detrimental to the new system, but believed that it would be premature to take any decision on the matter at present, given the challenges associated with the various options examined by the Secretary-General in his report. It would be best to focus on the issues identified by the Secretary-General in relation to the implementation of the new system before resolving the challenging and complex question of how to handle cases involving non-staff personnel.

The meeting rose at 3.45 p.m.

United Nations A/C.6/65/SR.6

General Assembly

Sixty-fifth session

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Sixth Committee

Summary record of the 6th meeting

Held at Headquarters, New York, on Friday, 8 October 2010, at 10 a.m.

Chairperson: Ms. Picco ..... (Monaco)
later: Mr. Nega (Vice-Chairperson) ..... (Ethiopia)

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Agenda item 76: Criminal accountability of United Nations officials and experts on mission

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10-57325 (E)

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The meeting was called to order at 10.10 a.m.

Agenda item 76: Criminal accountability of United Nations officials and experts on mission (A/65/185)

1. **Mr. Janssens de Bisthoven** (Belgium), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that any person who committed a serious offence while participating in a United Nations operation should be held fully accountable. Such acts had a serious impact not only on the victim and the host country, but also on the credibility of the United Nations. The European Union therefore continued to support a policy of zero tolerance of such conduct.

2. Of the 18 Member States that responded to the request for information pursuant to General Assembly resolution 64/110, the majority had legislation that would allow them to exercise criminal jurisdiction in such cases. Establishment of jurisdiction by sending States, coupled with greater cooperation among States and the United Nations, should go far towards eliminating impunity.

3. While only five cases of alleged criminal acts involving United Nations officials had been referred to their States of nationality during the period covered by the Secretary-General's report (A/65/185), it was important to ascertain the reasons for such a low number. If it became apparent that factors such as failure to report all relevant cases were responsible, it would be necessary to find appropriate solutions. Furthermore, the failure of most of the concerned States of nationality to respond to the Secretariat's request for information about the cases was worrisome.

4. The European Union continued to favour a dual approach to filling jurisdictional gaps, combining short- and long-term measures. It remained ready to consider the proposal for an international convention that would clearly delineate the circumstances in which Member States could exercise jurisdiction and the categories of individuals and crimes subject to that jurisdiction.

5. **Ms. Quezada** (Chile), speaking on behalf of the Rio Group, said that misconduct by United Nations officials and experts on missions must not go unpunished, as it harmed not only the victims but also the reputation of the Organization and had a detrimental effect on the fulfilment of mandates. While the report by the Secretary-General (A/65/185) showed that some States had taken steps to establish jurisdiction over such offences, it also made clear that much more needed to be done to ensure collectively, with respect for due process, that there was no longer room for impunity. Statistics on substantiated allegations of criminal activity or abuse by United Nations officials and experts on mission were valuable and should be provided regularly. In that regard, the Rio Group noted with appreciation the establishment of a website on issues and policies on conduct and discipline.

6. According to paragraph 84 of the report, the Office of Legal Affairs had referred the cases of five United Nations officials to their States of nationality for investigation and possible prosecution; however, the report on practice of the Secretary-General in disciplinary matters (A/65/180) cited 167 cases of misconduct and/or criminal behaviour, some involving sexual exploitation or abuse and child pornography. That disparity should be explained and more information on the criteria used to distinguish between serious misconduct and criminal behaviour should be provided.

7. The Rio Group reaffirmed its full support for the policy of zero tolerance of sexual exploitation and abuse or other criminal conduct, while reiterating the need for observance of the rule of law in the implementation of that policy. Moreover, the United Nations should be setting the standard in assistance to those whose rights had been violated. In that regard welcome progress had been made in implementing the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel, adopted by the General Assembly in its resolution 62/214.

8. Discussions between the Secretariat and Member States on the training of United Nations officials and experts on mission and on the conscientious exercise of the waiver of privileges and immunities should continue. Leadership by managers was vital in the prevention of misconduct. While there were many areas where cooperation could be improved, some areas, such as investigations in the field and during

criminal proceedings and the provision and assessment of evidence in administrative and jurisdictional proceedings, presented greater challenges.

9. **Mr. Morrill** (Canada), speaking on behalf of the CANZ group of countries (Australia, Canada and New Zealand), said that holding United Nations officials and experts on mission accountable for their criminal acts was critical to the integrity, credibility and effectiveness of the Organization and also served as a potent deterrent. In that regard, the CANZ group applauded the referral of the cases of five United Nations officials to the States of nationality for investigation and possible prosecution. The CANZ group also welcomed the discussion in the Secretary-General's report (A/65/185) on how the Organization might support Member States, at their request, in the development of domestic criminal law relevant to crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. The United Nations Office on Drugs and Crime (UNODC), in close partnership with the Office of Legal Affairs, was indeed well placed to provide assistance in the drafting of such legislation.

10. States needed to do more to close jurisdictional gaps. All Member States should consider establishing jurisdiction over serious crimes committed by their nationals while serving as United Nations officials or experts on mission and to report on efforts taken to investigate and, where appropriate, prosecute their nationals for such crimes. Over the long term, the CANZ group supported the proposal for a convention requiring Member States to exercise criminal jurisdiction over their nationals participating in United Nations operations abroad, as a way of strengthening the legitimacy and integrity of such operations.

11. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that, as major contributors and recipients of peacekeeping personnel, the countries of the Non-Aligned Movement attached great importance to the topic under discussion. While acknowledging the contributions and sacrifices of United Nations peacekeepers, the Movement stressed that all United Nations peacekeeping personnel should perform their duties in a manner that preserved the image, credibility, impartiality and integrity of the Organization and emphasized the importance of maintaining a policy of zero tolerance in all cases of sexual exploitation and abuse committed by peacekeeping personnel.

12. Implementation of the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse would help to mitigate the suffering of sexual exploitation and abuse victims. Likewise, General Assembly resolution 61/291 endorsing the revised draft model memorandum of understanding (contained in document A/61/19) should be implemented without delay, as it would strengthen accountability mechanisms and ensure due process in the investigation of sexual exploitation and abuse. Full implementation by all Member States of General Assembly resolutions 62/63, 63/119 and 64/110 would help to eliminate any jurisdictional gaps. Subsequently, an assessment could be undertaken to determine whether further action by the General Assembly was required. The Non-Aligned Movement continued to believe that progress on short-term measures was also needed. With regard to the procedure in the cases of credible allegations outlined in paragraph 9 of General Assembly resolution 64/110, any measures further to those already agreed by the Committee could be considered only once the nature and scope of the criminal behaviour to be addressed was fully understood.

13. It was premature to discuss a draft convention on criminal accountability of United Nations officials and experts on mission. For the time being, the Committee should focus on substantive matters and leave matters of form for a subsequent stage. The presence of Secretariat experts and officials during the current session might facilitate an interactive debate that would shed light on the various issues under consideration.

14. **Mr. Christian** (Ghana), speaking on behalf of the Group of African States, said that the agenda item under discussion was of great importance to the African countries, as a large number of United Nations officials and experts were currently deployed in Africa. While commending the contributions and sacrifices of United Nations peacekeepers, officials and experts on mission, the Group noted with concern the instances of sexual exploitation and abuse committed by a few among them. Such irresponsible conduct undermined the Organization's image, integrity and credibility and caused grave harm to the victims. It was of paramount importance to ensure that criminal acts never went unpunished. The perpetrators should be prosecuted regardless of their status. A zero-tolerance policy with

regard to sexual abuse and other criminal acts should remain the guiding principle.

15. Jurisdictional gaps could lead to a rise in criminality and must therefore be addressed. The Group therefore welcomed the efforts of many Member States to establish jurisdiction over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. Many Member States had also indicated their readiness to afford assistance in criminal investigations and extradition proceedings. Such cooperation among States was the basis of international law.

16. The African countries commended the improved predeployment training materials developed by the Conduct and Discipline Unit and encouraged troop-contributing countries to highlight the issues of sexual abuse and other criminal acts during the mandatory predeployment training. General Assembly resolutions 62/63 and 63/119 contained important policy and remedial measures which, if fully implemented, would effectively address the issue of criminal accountability of United Nations officials and experts on mission.

17. **Mr. Salem** (Egypt) said that ensuring the accountability of United Nations personnel on mission for any criminal acts committed was crucial for preserving the Organization's integrity and also sent a strong message of deterrence. In cases where credible allegations had been made against United Nations officials and experts on mission, the United Nations should cooperate with the law enforcement and judicial authorities of Member States against whose nationals allegations had been made.

18. Training and awareness-raising was also a key preventive tool used by peacekeeping operations and special political missions. As a major troop-contributing country, Egypt stressed high standards of conduct and provided mandatory predeployment training to all its military and police personnel. Moreover, it had entered into various bilateral mutual legal assistance agreements that facilitated cooperation in criminal investigations. His delegation reiterated its firm support for the zero-tolerance policy and called for continued and enhanced cooperation among States and between Member States and the United Nations.

19. **Mr. Bin Jusoh** (Malaysia) said that it was important that States should not delay in using available domestic mechanisms to deal effectively with any criminal acts committed by their nationals serving as United Nations officials and experts on mission. The Malaysian Peacekeeping Training Centre, aimed at promoting integrity and credibility among Malaysian peacekeeping personnel in the performance of their duties, had become an internationally recognized training facility emphasizing international humanitarian law and respect for rule of law. While training programmes such as those organized by United Nations conduct and discipline units and focal points and by national authorities were important to enhance cultural and gender awareness, zero-tolerance measures must also take into account the root causes of sexual exploitation and abuse, particularly the condition of women and other vulnerable groups in conflict situations. The United Nations and Member States should together strive to resolve such fundamental issues in addition to achieving operational and security objectives in conflict zones.

20. Malaysian law established jurisdiction over serious crimes committed by Malaysian military and civilian police personnel participating in overseas missions. Malaysia could also claim extraterritorial criminal jurisdiction over serious crimes such as terrorism, drug trafficking and trafficking in persons. His Government supported the call in General Assembly resolution 64/110 for cooperation with other States and with the United Nations in the exchange of information and in facilitating the conduct of investigations and prosecutions. Malaysia's laws on extradition and mutual assistance in criminal matters, together with several treaties, provided the legal basis for such international cooperation.

21. The working group to be established during the sixty-seventh session of the General Assembly should identify substantive issues and explore practicable solutions independently of the proposals contained in the draft convention prepared by the Group of Legal Experts, particularly as most of the categories to which the draft convention would apply were already adequately regulated by domestic laws, United Nations status-of-forces agreements and international humanitarian law.

22. **Ms. Rodríguez-Pineda** (Guatemala) said that, regrettably, the Committee had made little progress in its consideration of the item. The Special Committee on Peacekeeping Operations had recently expressed a desire for a status report on the deliberations of the Sixth Committee with regard to the report of the Group of Legal Experts (A/60/980). Although a working

group of the Sixth Committee would not be considering the report until the sixty-seventh session of the General Assembly, the Committee, in preparation, could perhaps reach agreement on a few basic points: that in the event of competing jurisdictions the host country should have priority; that the Committee's consideration should be limited in scope to the specific context of peacekeeping operations; that the measures to be recommended should apply to all persons performing services in peacekeeping operations; that the category of experts on mission comprised only non-uniformed experts and excluded military experts; that the scope of criminal responsibility to be considered should extend to more than cases of sexual abuse and exploitation; and that the attribution of criminal responsibility of a United Nations official did not exempt him or her from disciplinary measures.

23. The machinery for reporting and following up on cases of alleged misconduct by United Nations officials and experts was inadequate. Although her delegation welcomed the information in the report of the Secretary-General (A/65/185) on the referral to the States of nationality of five cases involving United Nations officials, it noted that none of the cases involved experts on mission. A better understanding was needed of the role to be played by the Office of Internal Oversight Services in investigations and the corresponding effect on the ongoing reforms of the Office. The Committee also required additional information on the involvement in such matters of the conduct and discipline units and on the Ombudsman's work in identifying systemic problems.

24. Existing international instruments could be of great assistance in expediting investigations through information exchange, extradition and other measures. Serious consideration should be given to updating the United Nations model status-of-forces agreement, which detailed the legal regime governing relations between the host country and the United Nations in peacekeeping operations. In addition to implementation of the short-term measures already agreed, on which the Committee would appreciate feedback, some longer-term efforts might be required, in particular peacebuilding and rule-of-law initiatives to help the host country increase its own investigative capacity.

25. **Mr. Kalinin** (Russian Federation) said that his delegation was concerned that instances of sexual exploitation and abuse and other serious offences by United Nations officials and experts on mission were continuing to occur. The General Assembly was advancing the fight against impunity through the measures it had adopted, which for the time being seemed adequate to the scale of the problem, provided they were implemented. Judging from the comments by Governments contained in the Secretary-General's reports on the item (A/63/260, A/64/183 and A/65/185), many States did have at their disposal sufficient mechanisms for prosecuting their nationals serving as United Nations officials and experts on mission. The criminal law and international treaties of the Russian Federation also contained provisions on prosecution for crimes committed outside the country. The chief role in exercising jurisdiction should be assigned to the State of nationality of the United Nations official alleged to have committed the offence. That would help to ensure due process, in view of the special legal status and actual conditions of service of such officials.

26. With regard to the information on credible allegations brought to the attention of the States of nationality that crimes might have been committed by United Nations officials or experts on mission, it was noteworthy that four of the five cases were crimes committed for gain. The success of the fight against impunity was largely dependent on the Secretariat's providing full and prompt information to the State concerned about the offence committed. Channels of communication and cooperation between the United Nations and States in such matters should be strengthened.

27. His delegation commended the preventive work being done by States, peacekeeping operations and special political missions, including the predeployment training of mission personnel. Further efforts should be made to identify gaps in international law that might obstruct criminal prosecution, before considering the advisability of further measures, such as the drafting of an international convention on the subject.

28. *Mr. Nega (Ethiopia), Vice-Chairperson, took the Chair.*

29. **Mr. Saripudin** (Indonesia) said that the efforts of the men and women who served the United Nations made a difference to the peace and security of the world and the quality of life of the peoples they served. They sometimes paid the ultimate price, and they deserved the best protection the Organization had to offer. In return, they should understand the nature of

the trust vested in them and protect the credibility of the United Nations. If they engaged in criminal acts, justice should be exacted. In that light, his delegation strongly supported General Assembly resolution 64/110 and was pleased that the report of the Secretary-General (A/65/185) reflected the efforts of an increasing number of States to implement it. It was important that States should establish jurisdiction over crimes committed by their nationals while serving as United Nations officials or experts on mission. There should be zero tolerance for the commission of criminal acts by United Nations peacekeepers, and the perpetrators of such acts must be brought to justice. A zero-tolerance policy should be included in all Security Council peacekeeping mandates.

30. In addition to training, other practical awareness-raising measures were needed in order to strengthen standards of conduct for United Nations personnel. Indonesia, in collaboration with the Department of Peacekeeping Operations, had held a "training of trainers" programme in Jakarta in October 2009, the first of its kind in the region. One of the objectives had been to familiarize trainers from troop-contributing countries with the revised predeployment training materials. The overall training and awareness-raising activities of the Department of Peacekeeping Operations and the Department of Field Support, together with those of the Conduct and Discipline Unit, had led to significant progress in establishing high standards for personnel in the field.

31. Strong commitment by both sending and receiving countries was the best guarantee that perpetrators of serious crimes would not escape justice. Enhanced cooperation between Member States and the United Nations was needed in order to strengthen awareness-raising for members of peacekeeping and expert missions and, when necessary, to investigate and collect evidence of misconduct.

32. **Mr. Srivali** (Thailand) said that his country firmly supported the policy of zero tolerance for criminal conduct by United Nations officials or experts on mission, in particular sexual abuse, exploitation or violence committed against women and children by peacekeeping personnel. As a troop-contributing country, Thailand welcomed the report before the Committee; the information on cooperation between States and the Secretariat in the investigation of serious crimes committed by United Nations officials and experts on mission provided a basis for formulating best practices and identifying gaps in the relevant legal regime.

33. Much more needed to be done, however: the international community must demonstrate the necessary political will to bring perpetrators to justice. States should consider establishing jurisdiction over serious crimes committed by their nationals while serving as United Nations officials and experts on mission. In addition, cooperation between host States and States of nationality and between States and the United Nations in investigating and prosecuting crimes should be enhanced. In particular, States should use a flexible approach to the double criminality requirement for extradition, applying a conduct-based test rather than looking for a correspondence of offence elements. Officials and experts going on mission for the United Nations must understand the relevant codes of conduct and receive adequate, mandatory predeployment training. In that respect, his delegation appreciated the ongoing efforts of the Department of Peacekeeping Operations and the Department of Field Support. At the same time, however, Member States should share the burden of prevention by selecting competent individuals and devising effective monitoring mechanisms.

34. While there was merit in the proposal to draft an international instrument requiring States to exercise criminal jurisdiction over nationals participating in United Nations operations abroad, the time was perhaps not ripe to discuss it. A number of issues would have to be carefully considered, including the interplay of such an instrument with the regime of immunity for United Nations staff; the possible responsibility of superiors who were aware of crimes committed by their subordinates but failed to take action; and cooperation between the sending State, the host State and the United Nations to ensure effective investigation and successful prosecution. Instead of drafting a convention, efforts could focus on reviewing the United Nations model status-of-forces agreement, with particular reference to updating the clauses on jurisdiction and cooperation in criminal investigations.

35. **Mr. Chekkori** (Morocco) said that the United Nations should be commended for its determination to examine systematically any serious criminal allegations against its officials or experts on mission and to take appropriate measures when such allegations were well-founded. While the Organization and Member States had made significant efforts to combat

impunity, parallel efforts aimed at preventing misconduct needed to be strengthened in peacekeeping missions, at Headquarters and during the predeployment phase. The Department of Peacekeeping Operations and the Department of Field Support were to be commended for their efforts to ensure adherence to the prescribed standards of conduct. The training and awareness activities carried out by the Conduct and Discipline Unit at Headquarters and its counterparts in peacekeeping and special political missions should be encouraged. The Conduct and Discipline Unit should work more closely with the Office of Internal Oversight Services to preserve the credibility of United Nations peacekeeping operations and their personnel.

36. His delegation supported measures aimed at closing jurisdictional gaps, in particular by encouraging Member States to establish jurisdiction over crimes of a serious nature committed by their nationals, when serving as United Nations officials and experts on mission. Member States should work together to ensure that crimes committed by United Nations personnel did not go unpunished, and that due process and the presumption of innocence, the right to a defence and the rights of victims were guaranteed. In compliance with the principles of equity and justice, when allegations against United Nations officials and experts on mission were determined by a United Nations administrative investigation to be unfounded, appropriate measures should be taken, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission.

37. His delegation believed that it could be useful to negotiate a binding international convention on the matter in the future. In the medium term, however, other aspects of the issue should be further examined before such a decision was made. For the time being, the discussion should focus on substantive issues, in particular, the effective implementation of the existing normative framework and ways of strengthening it.

38. Given the importance of the issue of the criminal accountability of United Nations officials and experts on mission, the Sixth Committee should work closely with the Special Committee on Peacekeeping Operations on a regular basis, in order to effectively address the question and avoid duplication of efforts.

39. **Mr. Omaish** (Jordan) said that his Government wished to emphasize its complete commitment to a zero-tolerance policy with regard to criminal conduct by United Nations officials and experts on mission. In that connection, the Jordanian Penal Code provided for the exercise of jurisdiction over any Jordanian who, as perpetrator, instigator or accomplice, had committed, outside the country, a felony or misdemeanour punishable by Jordanian law.

40. Jordan cooperated with other States on the extradition of criminals and provided and received assistance in connection with investigations and evidence. To that end, Jordan was a party to more than 17 bilateral and multilateral agreements that included provisions on mutual legal assistance.

41. His delegation stressed the importance of awareness-raising and training on standards of conduct as a means of preventing criminal conduct. Individuals who committed crimes while serving as United Nations officials or experts on mission should be punished, and the Organization must ensure that appropriate mechanisms were put in place in order to achieve that aim. Cooperation among Member States and the Organization, as well as among United Nations departments, was vital to achieving justice and avoiding impunity. In that connection, his delegation attached great importance to the report of the Group of Legal Experts (A/60/980) and the recommendations contained therein.

42. **Mr. Eriksen** (Norway) said there was broad agreement that serious crimes, such as sexual exploitation and abuse, should not go unpunished. His delegation fully supported the United Nations zero-tolerance policy towards crimes committed by its officials, as impunity fostered anger, suspicion and mistrust. To eliminate impunity, both short- and long-term measures were necessary. States must establish jurisdiction over serious crimes committed by their nationals serving as members of a United Nations mission. Norway therefore urged all States that had not already done so to provide information regarding their relevant legislation. Cooperation among Member States and between Member States and the Organization must be strengthened. Enhanced cooperation and information-sharing could best be achieved through the establishment of a legally binding framework.

43. The General Assembly resolutions 63/119 and 64/110, which had included concrete recommendations for stronger cooperation, had contributed to the

common goal of avoiding impunity for serious crimes. However, a number of those recommendations were qualified by a reference to States' domestic law. While it was obvious that cooperation must be carried out in compliance with domestic laws, it was equally clear that current domestic laws could not serve as a justification for non-cooperation. Rather, States must be prepared to consider amending their domestic laws when that was warranted in order to achieve the object and purpose of the resolutions.

44. Although the Secretary-General's report (A/65/185) contained information on cases where credible allegations had been brought to the attention of the State of nationality of the alleged perpetrator, his delegation noted with concern that the United Nations had received few responses from those States. Moreover, Norway would appreciate receiving the Secretariat's assessment as to the true extent, if any, of criminal conduct by United Nations officials and experts on mission, and would caution against the hasty conclusion that the relatively low number of cases meant that the current system was adequate.

45. **Mr. Swiney** (United States of America) said that the United States firmly believed that United Nations officials and experts on mission should be held accountable for the crimes they committed. His delegation appreciated the efforts made to refer credible allegations against United Nations officials to the State of the alleged offender's nationality and would urge States to take the appropriate action with regard to those individuals and report to the United Nations on the disposition of the cases. States were the key to curbing abuses by their nationals serving in a United Nations peacekeeping capacity.

46. The United Nations was also making commendable efforts to strengthen the training provided on standards of conduct, including through predeployment and in-mission training. With respect to the possible negotiation of a multilateral convention on criminal accountability of United Nations officials and experts on mission, his delegation doubted whether a convention was the most efficient or effective means of ensuring such accountability and urged States to redouble their efforts to develop practical ways to address the impediments to accountability.

47. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that, not very long ago, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) had excelled in generating scandals. Paedophilia, prostitution on a grand scale, including of minors, sexual harassment and rape had all become common currency, discrediting the work of the United Nations. He could still call up the awful memory of a six-year-old girl raped by a United Nations official in Goma. The culprit had never been brought to justice and had returned to his home country. A sex tourist operating under cover of the United Nations had had to leave the Democratic Republic of the Congo quietly under military escort. Some United Nations officials in Kinshasa had engaged in a lucrative trade in prostitution and pornography involving minors. Only a few months ago, a Congolese Republican Guard patrol had apprehended five Blue Helmets from the United Nations raping a girl near N'Djili International Airport in Kinshasa. Although the parties concerned had confessed, nothing seemed to have been done to punish them.

48. It had been as a result of revelations in 2004 of the exploitation and sexual abuse committed by members of United Nations peacekeeping forces in his country that the Secretary-General had decided to follow a zero-tolerance policy in respect of such acts. Six years later, practically none of these scandalous acts had been the subject of appropriate disciplinary action and penalties, as could be seen from the report before the Committee (A/65/185). His delegation therefore was forced to draw the same conclusion as in the past: despite all the rhetoric on the subject of criminal accountability, in practice impunity was assured all the way down the line. Host States were often bound by headquarters agreements and had no room to manoeuvre; at best, they could refer suspects to the United Nations. Since the United Nations could not punish them, they were sent back to their countries of origin, which often did not want to publicly admit the misconduct of their nationals and were therefore reluctant to prosecute them.

49. With reference to paragraph 85 of the report, he noted with disappointment that no information had been provided by the States of nationality concerned about progress in the handling of the cases referred to them. Paragraph 89 of the report was likewise disappointing: United Nations cooperation with law enforcement and judicial authorities was hedged about with conditions. He had expected to find in the report a list of cases in which the United Nations was willing to waive immunity for the sex tourists who had sullied its

reputation, but none were mentioned nor did the report say how many States were already exercising jurisdiction. On the other hand, his delegation commended the efforts of the Department of Peacekeeping Operations and the Department of Field Support to ensure adherence to the code of conduct and related rules; training and awareness-raising on United Nations standards of conduct were worthy of support.

50. In view of the foregoing, it was unfortunate that it had been deemed premature to negotiate an international convention on criminal accountability of United Nations officials and experts on mission. In his delegation's view, it was the only sensible option. He would also urge troop-contributing countries to investigate allegations of sexual misconduct reported by United Nations investigators and to report to the Secretary-General on the outcome of such cases. The perpetrators of such acts should pay damages to their victims, including child support payments for those born as a result of their actions.

51. **Mr. Badji** (Senegal) said that his delegation wished to express gratitude for the devotion, professionalism, courage and self-sacrifice shown by United Nations officials and experts on mission, often in extremely difficult conditions. Nonetheless, their noble mission demanded not only sacrifice but also a high degree of morality and responsibility; any misconduct on their part damaged the image and credibility of the Organization. For that reason his delegation fully supported the zero-tolerance policy adopted by the United Nations in connection with crimes, including sexual exploitation and abuse, committed by United Nations officials and experts on mission.

52. Training and awareness-raising on United Nations standards of conduct for peacekeeping operations and special political missions were central to prevention efforts. The work done by the Department of Peacekeeping Operations and the Department of Field Support to ensure adherence to the code of conduct and related rules was salutary and should be enhanced.

53. In keeping with General Assembly resolutions 62/63, 63/119 and 64/110, all States that had not yet done so should take all appropriate measures to ensure that crimes by United Nations officials and experts on mission did not go unpunished and that the perpetrators of such crimes were brought to justice. Beyond steps at the domestic level, dynamic, good-faith cooperation should be instituted between Member States and the United Nations in information exchange, extradition and the enforcement of penalties in order to facilitate the exercise of jurisdiction, including through legal assistance and evidence-gathering.

54. **Mr. Park** Chull-Joo (Republic of Korea) said that the credibility of the United Nations might be seriously damaged if criminal conduct by its personnel was not investigated and prosecuted as appropriate. The Republic of Korea supported the Secretary-General's policy of waiving immunity if he believed it would impede the course of justice. The referral to the States of nationality of five cases of alleged criminal conduct by United Nations officials was a good step towards ensuring criminal accountability in the interests of justice. It was a matter of concern, however, that those Member States had not responded to enquiries by the United Nations about their handling of the cases.

55. Regular training on United Nations standards of conduct was essential in preventing misconduct by United Nations staff and experts. His delegation appreciated the vigorous efforts of the Conduct and Discipline Unit and troop-contributing and police-contributing countries to provide predeployment training in that regard.

56. The Secretary-General should continue to protect United Nations officials who reported misconduct by other officials or experts from possible retaliation. Moreover, human rights standards, including due process, must be guaranteed throughout criminal proceedings by the States exercising jurisdiction.

57. **Mr. Jomaa** (Tunisia) said that his delegation recognized the valuable contribution and great sacrifices made by United Nations officials and experts on mission. At the same time it was concerned about reports of criminal acts committed by a few among them. Such crimes must be properly investigated and prosecuted in order to avoid giving the impression that United Nations officials and experts on mission enjoyed impunity, something that would undermine the credibility of the Organization. Jurisdictional gaps should be seriously addressed. Cooperation among States and the United Nations in facilitating investigation, prosecution and extradition proceedings was also of paramount importance in bringing to justice officials and experts who were alleged to have committed serious crimes. Under the Tunisian Criminal

Code, Tunisian nationals could be prosecuted in Tunisia for crimes committed abroad when serving as United Nations officials or experts on mission. The Tunisian Code of Criminal Procedure covered cooperation with foreign States to facilitate investigation and prosecution and the exchange of information, and Tunisia had entered into many bilateral agreements on judicial cooperation.

58. Training on United Nations standards of conduct was at the centre of all preventive measures and should be strengthened. Mandatory predeployment training for military personnel and police units was key to promoting an awareness that certain conduct could constitute a punishable crime. In-mission and predeployment training for other United Nations officials and experts should also be pursued.

59. **Mr. Pavlichenko** (Ukraine) said that crimes committed by United Nations officials or experts on mission must be properly investigated and any guilty parties brought to justice, in order to preserve the credibility and authority of the Organization. Investigations and prosecutions must, of course, be conducted in accordance with international law, with respect for due process. The United Nations should continue to encourage States to establish and exercise criminal jurisdiction over their nationals participating in United Nations operations who committed serious crimes in a host State. In addition, his delegation could consider the proposal to negotiate an international convention to fill jurisdictional gaps.

60. In view of the recent spate of attacks against United Nations personnel in peacekeeping missions, it was urgent for troop- and police-contributing countries to participate fully in the investigation of crimes committed against their nationals serving in United Nations peacekeeping missions. In that connection, his country looked forward to receiving a report of the Secretary-General on the processes involved in the investigation and prosecution of crimes committed against United Nations peacekeepers, including advice on the feasibility of using the Organization's investigative mechanism, as requested by the Special Committee on Peacekeeping Operations.

61. **Mr. Gonzales** (Monaco), recalling the many allegations made against United Nations officials or experts on mission, including allegations of sexual violence during peacekeeping operations, said that the United Nations must not allow crimes committed by its officials or experts on mission to go unpunished; the Organization's image and credibility were at stake. The report of the Secretary-General (A/65/185) showed that the perpetrators could be brought to justice with respect for the institutional autonomy of Member States. It stressed good cooperation by States with each other and with the United Nations in the exchange of information and outlined the tools available to help Member States develop their domestic criminal law in order to be able to prosecute their nationals who were alleged to have committed crimes of a serious nature while serving as United Nations officials and experts on mission.

62. Special effort should be made to strengthen existing programmes aimed at raising awareness of United Nations standards of conduct. Discipline, ethics and predeployment training would be better absorbed if provided in the mother tongue of officials or experts on mission in addition to the official languages of the United Nations. Publication of relevant statistical data would make it easier to establish needs and priority areas of action.

63. While the report of the Secretary-General provided short-term assurances on the filling of jurisdictional gaps, it would be advisable to consider long-term means of eradicating impunity. His delegation hoped that substantial progress could be made even prior to the sixty-seventh session on the question of a specific convention on the criminal accountability of United Nations officials and experts on mission.

64. **Ms. Valenzuela Díaz** (El Salvador) said that her delegation fully agreed with the sentiment that no one, including peacekeepers, should be above the law and supported the policy of zero tolerance for criminal acts committed by United Nations officials and experts on mission, in particular sexual exploitation and abuse. The latter acts were contrary to the very essence of the peacekeeping mandate and should not be considered merely ordinary crimes, although they might not necessarily reach the level of international crimes.

65. Her country's criminal legislation contained a number of provisions under which Salvadoran personnel participating in United Nations missions could be prosecuted. Under article 8 of the Penal Code, which expressed the principle of territoriality based on State sovereignty, any criminal act committed in the territory of El Salvador or in an area under its

jurisdiction would be subject to Salvadoran law, regardless of the nationality of the perpetrator or the victim. Pursuant to article 9, paragraph 1, of the Penal Code, which expressed the principles of nationality and complementarity, Salvadoran nationals in the service of the State who had committed a crime in a foreign territory could be tried for it in El Salvador if they had not been tried in the place where the crime was committed because of immunities attaching to their position. If a Salvadoran national serving as a United Nations official or expert on mission committed a crime in another country, the host State would have priority jurisdiction, but if it did not prosecute, El Salvador would have to do so. Double jeopardy would, of course, be avoided.

66. Since cooperation was vital in investigating and prosecuting such crimes, her Government had signed many treaties on mutual assistance in criminal matters and on extradition. The Salvadoran Code of Criminal Procedure about to enter into force included a provision on cooperation in international investigations which, among other things, would allow for joint investigative teams. It was a step towards a broader and better articulated system of international cooperation for the prosecution of serious cross-border crimes, irrespective of the identity or special status of the perpetrator.

67. **Mr. Umana** (Nigeria) said that the Secretariat should be commended for its efforts to facilitate the provision of information and materials for criminal proceedings initiated by States in respect of crimes of a serious nature allegedly committed by United Nations officials or experts on mission. It was clear from the report of the Secretary-General (A/65/185) that many States had established jurisdiction over serious crimes committed by their nationals while serving as United Nations officials or experts. He urged the Secretariat to continue assisting Member States in that regard.

68. In Nigeria, the legal regime did not include special immunities for public officials serving within or outside the country. Nigerian officials who committed punishable acts abroad while covered by immunities granted to United Nations officials or to diplomatic representatives were nonetheless subject to prosecution at home. Nigerian Armed Forces personnel who served as United Nations officials or experts on mission were subject to a system of military discipline established by the Nigerian Armed Forces Act and the Police Act of 2003. Those Acts had extraterritorial effect, which ensured accountability at all times for Nigerian Armed Forces personnel deployed outside the country, including those engaged in United Nations duties. A new unit had been established dedicated solely to the training of military personnel before their deployment on United Nations assignments, to ensure that they maintained the highest standards of integrity and respectability.

69. Nigeria was committed to sustaining its tradition of active participation in United Nations peacekeeping operations. It would remain vigilant and would continue to take measures to ensure that its credibility was not undermined by the conduct of some of its nationals serving as United Nations officials or experts on mission.

70. He urged all delegations to cooperate in combating impunity and ensuring the accountability of United Nations officials and experts on mission. The international community must resolve to take measures to prevent exploitation of vulnerable victims of conflict by those who were expected to protect them.

71. **Mr. Choudhary** (India) said that India was concerned about the serious crimes committed by United Nations officials and experts on mission in spite of the zero-tolerance policy and codes of conduct put in place by the United Nations. All officials found guilty of a serious offence should be prosecuted and held accountable, for such acts had a serious impact not only on the victim and the host country, but also on the credibility and image of the United Nations. India therefore welcomed General Assembly resolution 64/110, which strongly urged all States to consider establishing jurisdiction over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. It was to be hoped that implementation of that resolution would help fill jurisdictional gaps in Member States that did not currently exercise extraterritorial jurisdiction over crimes committed by their nationals abroad. India was already complying with that resolution in that its Penal Code covered extraterritorial offences committed by Indian nationals serving at home or abroad.

72. With regard to the call for all States to cooperate with each other in the conduct of investigations and prosecution of alleged criminals, India had well-developed law on mutual legal assistance in criminal matters, contained in the Code of Criminal Procedure. India had also entered into a number of bilateral mutual

legal assistance agreements designed to facilitate cooperation in criminal investigations and extradition proceedings. The relevant authorities in the country cooperated with all jurisdictions, as well as with the United Nations, in the investigation of offences committed by any Indian official or expert on mission. The Extradition Act provided for the extradition of persons guilty of extraditable offences. In the absence of a bilateral treaty on extradition or mutual assistance in criminal matters, the Government of India could offer assistance on a reciprocal and case-by-case basis and could use an international convention as the legal basis for considering extradition.

73. His delegation appreciated the offer of the United Nations, and the United Nations Office on Drugs and Crime in particular, to provide assistance to Member States in the development of criminal law concerning serious crimes committed by their nationals while serving as United Nations officials or experts on mission. States that perceived gaps in their national legal systems in that regard should avail themselves of that assistance.

74. Even more important than swift punitive action once culpability was established was predeployment and in-mission training to provide officials with a multicultural, pluralistic and tolerant outlook before being deployed to a foreign country. There did not seem to be a need for a specific convention on the criminal accountability of United Nations officials and experts on mission, as existing provisions in domestic laws were generally adequate to address the issue, and specific jurisdictional gaps could be addressed.

The meeting rose at 12.35 p.m.